

REMARKS

Applicants respectfully request reconsideration of the present application in view of the reasons that follow.

I. Status of the Claims and Amendments

Claim 23 is amended. Exemplary support can be found on page 9, lines 25-27, and page 10, lines 12-13, of the specification. No new matter is added.

Claims 37 and 38 are added. Exemplary support for these claims can be found on page 9, lines 25-27, and page 10, lines 12-13, of the specification, respectively. No new matter is added.

After amending the claims, claims 23, 26-31, and 36-38 will be pending and subject to examination.

II. Claim Rejections - 35 U.S.C. § 103:

Claims 23, 26-31 and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Nos. 6,085,576 and 6,839,636 to Sunshine *et al.* each in view of U.S. Patent No. 6,495,892 to Goodman *et al.* The Examiner acknowledges in each rejection that neither '576 nor the '636 reference disclose a passivation layer. The Examiner argues, however, that the vapor sensing devices disclosed by either the '576 or the '636 references, in view of the passivation layer disclosed by Goodman, renders the presently claimed invention obvious, because "[o]ne would add the passivation layer to protect the sensor array from the elements." (Office Action dated September 18, 2008 at page 3, lines 10-14 and at page 4, lines 14 – 19.) Applicants respectfully traverse these grounds of rejection.

Modifying the '576 and '636 patents to include a passivation layer would change the principle of operation of the '576 and '636 patents, as discussed in detail in Applicants' response of March 18, 2009. Generally, the sensor modules of the '576 and '636 patents are used to detect analytes, and adding a passivation layer would hamper their performance or

render them entirely unsuitable for that purpose. Accordingly, the '576 and '636 patents cannot be modified as suggested by the Examiner. *See* MPEP 2143.01(VI). In short, there is simply no motivation to add a passivation layer to the sensors of the '576 and '636 patents.

“[T]he Examiner submits that the addition of the layer from Goodman would not result in an inoperable device.” (Office Action at p. 3.) This, however, does not explain *why* one of ordinary skill in the art would add a passivation layer to the sensor modules of the '576 and '636 patents. One of ordinary skill in the art would expect a passivation layer to adversely affect sensor performance, even if the sensor is not rendered entirely inoperable. Indeed, the claims have been amended to recite that the passivation layer “prevents” or “slows” analyte from contacting the second sensing element. Because the modification would result in decreased sensor performance, one of ordinary skill in the art would be discouraged from adding a passivation layer.

The purported motivation, “to protect the sensor array from the elements,” does not find support in the evidence of record. Nothing suggests that the sensor arrays of the '576 and '636 patents were fragile and required protection from the elements. Moreover, the claims have been amended to recite that the passivation layer “prevents analyte from contacting said second sensing element or slows the analyte’s contact with said second sensing element.” The passivation layer, therefore, would, at best, hinder sensor performance and, at worst, render the sensor inoperable. Accordingly, a skilled artisan would not decrease sensor performance in an effort to solve a non-existent problem.

The Examiner also states that “the mere placement of the passivation layer *anywhere* on the sensor element would meet the claim limitations as currently written.” (Office Action at p. 4, emphasis original.) Applicants have amended the claims to recite that the passivation layer “prevents analyte from contacting said second sensing element or slows the analyte’s contact with said second sensing element.” Thus, the claims do not permit the placement of the passivation layer anywhere. The passivation layer must be placed such that the second sensing element is blocked from analyte or analyte is slowed in reaching the second sensing element.

For at least these reasons, Applicants respectfully request reconsideration and withdrawal of these grounds of rejection.

CONCLUSION

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

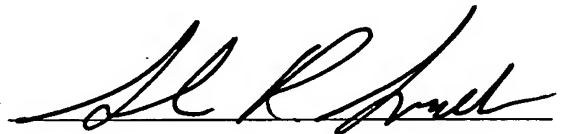
The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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By



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